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Promotion and protection of human rights: implementation of human rights instruments

Report of the Third Committee*

Rapporteur: Ms. Tebatso Future **Baleseng** (Botswana)

I. Introduction

1. At its 3rd plenary meeting, on 21 September 2007, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-second session, under the item entitled "Promotion and protection of human rights", the sub-item entitled "Implementation of human rights instruments" and to allocate it to the Third Committee.

2. The Third Committee considered the sub-item at its 20th, 21st, 28th, 29th, 34th and 51st meetings, on 23, 29 and 31 October and on 21 November 2007. The Committee held a general discussion on the sub-item jointly with sub-items 70 (d) and (f) at its 20th and 21st meetings, and took action on sub-item 70 (a) at its 29th, 34th and 51st meetings. An account of the Committee's consideration is contained in the relevant summary records (A/C.3/62/SR.20, 21, 28, 29, 34 and 51).

3. For the documents before the Committee under this sub-item, see document A/62/439.

4. At the 20th meeting, on 23 October, the Director of the Office of the United Nations High Commissioner for Human Rights, New York, made an introductory statement (see A/C.3/62/SR.20).

5. At the 28th meeting, on 29 October, the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment made a presentation and engaged in a dialogue with the representatives of Sri Lanka, Portugal (on behalf of the States Members of the United Nations that are members of the European Union), Indonesia, the Islamic Republic of Iran,

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Norway, China, Nigeria, Switzerland, Finland, South Africa, Iraq, Canada, Chile and Paraguay (see A/C.3/62/SR.28).

II. Consideration of proposals

A. Draft resolution A/C.3/62/L.25

6. At the 29th meeting, on 29 October, the representative of Sweden, on behalf of Albania, Argentina, Armenia, Austria, Belgium, Benin, the Bolivarian Republic of Venezuela, Bolivia, Bosnia and Herzegovina, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Mexico, Moldova, the Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and the United Kingdom of Great Britain and Northern Ireland, introduced a draft resolution entitled "International Covenants on Human Rights" (A/C.3/62/L.25). Subsequently, Angola, Azerbaijan, Cape Verde, the Dominican Republic, Greece, Israel, Lithuania, Malta, Monaco, Montenegro, Nicaragua, Timor-Leste, Ukraine and Uruguay joined in sponsoring the draft resolution.

7. At its 34th meeting, on 31 October, the Committee was advised that the draft resolution had no programme budget implications.

8. Also at its 34th meeting, the Committee adopted draft resolution A/C.3/62/L.25, without a vote (see para. 16).

9. Before the adoption of the draft resolution, a statement was made by the representative of the United States of America (see A/C.3/62/SR.34).

B. Draft resolution A/C.3/62/L.26 and Rev.1 and amendment contained in document A/C.3/62/L.27

10. At the 29th meeting, on 29 October, the representative of Denmark, on behalf of Albania, Argentina, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Costa Rica, Croatia, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Mexico, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Turkey, introduced a draft resolution entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (A/C.3/62/L.26). Subsequently, Armenia, Benin, Cape Verde, the Dominican Republic, Ecuador, Georgia, Lithuania, Moldova, Nicaragua and Ukraine joined in sponsoring the draft resolution. The draft resolution read as follows:

"*The General Assembly*,

"*Reaffirming* that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

"*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

"*Recalling also* that a number of international, regional and domestic courts, including the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law and have held that the prohibition of cruel, inhuman or degrading treatment or punishment is customary international law,

"*Recalling further* the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

"*Noting* that under the Geneva Conventions of 1949 torture and inhuman treatment are a grave breach and that under the statutes of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court acts of torture in armed conflict constitute war crimes and can constitute crimes against humanity,

"*Welcoming* the establishment of national mechanisms for the prevention of torture pursuant to the obligations of States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 22 June 2006,

"*Welcoming also* the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the General Assembly in its resolution 61/177 of 20 December 2006,

"*Commending* the persistent efforts by non-governmental organizations, including the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

"1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

"2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based

manifestations, and stresses that all acts of torture must be made offences under domestic criminal law;

"3. *Also emphasizes* the importance of States ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

"4. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

"5. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible, prosecuted and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed;

"6. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;

"7. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to fulfil their obligations to prosecute or extradite those alleged to have committed acts of torture;

"8. *Calls upon* all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty;

"9. *Emphasizes* that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

"10. *Urges* States to ensure that any statement that is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

"11. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment or any other form of deprivation of liberty for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

"12. *Urges* States not to expel, return ("refuter"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-defilement;

"13. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

"14. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

"15. *Reminds* all States that prolonged incommunicado detention or detention in secret places facilitates the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

"16. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

"17. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

"18. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 of the Convention and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

"19. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles and persons with disabilities when submitting reports to the Committee against Torture;

"20. *Calls upon* States parties also to become parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides further measures for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

"21. *Welcomes* the work of the Committee against Torture and its report submitted in accordance with article 24 of the Convention, recommends that the Committee continue to include information on the follow-up by States to its recommendations, and encourages the Committee to further strengthen efforts to ensure that its meeting time is used most effectively;

"22. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee against Torture and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

"23. *Notes with appreciation* the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

"24. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

"25. *Calls upon* all States to fully cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to thoroughly and expeditiously respond to and follow up his urgent appeals, to respond favourably and rapidly to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

"26. *Stresses* the need for the continued regular exchange of views among the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms and non-governmental organizations with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

"27. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, and appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and to contribute to the Voluntary Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee on Prevention of Torture;

"28. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

"29. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

"30. *Further requests* the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-third session a report on the status of the Convention and a report on the operations of the Fund;

"31. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

"32. *Decides* to consider at its sixty-third session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment."

11. At its 51st meeting, on 21 November, the Committee had before it a revised draft resolution entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (A/C.3/62/L.26/Rev.1), sponsored by Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Moldova, Monaco, Montenegro, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, the Republic of Korea, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay. Subsequently, Bangladesh, Burkina Faso, the Congo, Côte d'Ivoire, Kyrgyzstan,

Mauritania, Micronesia (Federated States of), Mongolia, Morocco, Rwanda and Timor-Leste joined in sponsoring the draft resolution.

12. At the same meeting, the Committee was advised that the draft resolution had no programme budget implications.

13. Also at the same meeting, the representative of Denmark orally revised the text by adding at the end of the last preambular paragraph the words "and its relevant resolutions".

14. Also at the 51st meeting, the representative of Belarus made a statement, in which he withdrew the amendment contained in document A/C.3/62/L.27 (see A/C.3/62/SR.51).

15. At its 51st meeting, the Committee adopted draft resolution A/C.3/62/L.26/Rev.1, as orally revised, without a vote (see para. 16).

III. Recommendation of the Third Committee

16. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
International Covenants on Human Rights

The General Assembly,

Recalling its resolution 60/149 of 16 December 2005 and Commission on Human Rights resolution 2004/69 of 21 April 2004,[1]

Mindful that the International Covenants on Human Rights[2] constitute the first all-embracing and legally binding international treaties in the field of human rights and, together with the Universal Declaration of Human Rights,[3] form the core of the International Bill of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] and reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, that they should be treated in a fair and equal manner, on the same footing and with the same emphasis, and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the other rights,

Recognizing the important role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in examining the progress made by States parties in fulfilling the obligations undertaken in the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights[4] and in providing recommendations to States parties on their implementation,

Considering that the effective functioning of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights is indispensable for the full and effective implementation of the International Covenants on Human Rights,

Noting the ongoing deliberations on the proposal to rectify the legal status of the Committee on Economic, Social and Cultural Rights,

Recognizing the importance of regional human rights instruments and monitoring mechanisms in complementing the universal system of promotion and protection of human rights,

1. *Reaffirms* the importance of the International Covenants on Human Rights[2] as major components of international efforts to promote universal respect for and observance of human rights and fundamental freedoms;

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[1] *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[2] Resolution 2200 A (XXI), annex.

[3] Resolution 217 A (III).

[4] Resolution 2200 A (XXI), annex, and resolution 44/128, annex.

2. *Strongly appeals* to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] and to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil and Political Rights[4] and making the declaration provided for in article 41 of the International Covenant on Civil and Political Rights, and, while acknowledging that additional States have recently become parties to these instruments, requests the Secretary-General to continue to support the annual treaty event to this end;

3. *Invites* the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights with a view to achieving universal adherence;

4. *Calls for* the strictest compliance by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and, where applicable, the Optional Protocols to the International Covenant on Civil and Political Rights;

5. *Emphasizes* that States must ensure that any measure to combat terrorism complies with their obligations under relevant international law, including their obligations under the International Covenants on Human Rights, and takes note with appreciation of the reports submitted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;[5]

6. *Stresses* the importance of avoiding the erosion of human rights by derogation, and recalls that certain rights are recognized as non-derogable in any circumstances, underlines the exceptional and temporary nature of any such derogations, and that they must be in accordance with the conditions and procedures stipulated under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency so that the justification for the appropriateness of measures taken in those circumstances can be assessed, and in this regard takes note of General Comment No. 29 adopted by the Human Rights Committee;[6]

7. *Encourages* States parties to consider limiting the extent of any reservations that they lodge to the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, to formulate any reservations as precisely and narrowly as possible and to regularly review such reservations with a view to withdrawing them so as to ensure that no reservation is incompatible with the object and purpose of the relevant treaty;

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[5] A/HRC/4/26, E/CN.4/2006/98, A/62/263, A/61/267 and A/60/370.

[6] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex VI.

8. *Welcomes* the annual reports of the Human Rights Committee submitted to the General Assembly at its sixty-first[7] and sixty-second[8] sessions, and takes note of the General Comments adopted by the Committee, including the most recent, General Comment No. 32 on the right to equality before courts and tribunals and to a fair trial;[9]

9. *Also welcomes* the reports of the Committee on Economic, Social and Cultural Rights on its thirty-fourth and thirty-fifth sessions[10] and on its thirty-sixth and thirty-seventh sessions,[11] and takes note of the General Comments adopted by the Committee, including the most recent, General Comment No. 17 on the right of everyone to benefit from the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he or she is an author,[12] and General Comment No. 18 on the right to work;[13]

10. *Expresses regret* at the number of States parties that have failed to fulfil their reporting obligations under the International Covenants on Human Rights, urges States parties to fulfil their reporting obligations on time, invites them to make use of the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents,[14] when submitting reports, and urges States to attend and participate in the consideration of the reports by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights when so requested;

11. *Urges* States parties to make use in their reports of sex-disaggregated data, and stresses the importance of integrating a gender perspective in the implementation of the International Covenants on Human Rights at the national level, including in the national reports of States parties and in the work of the Human Rights Committee and of the Committee on Economic, Social and Cultural Rights;

12. *Strongly encourages* States parties that have not yet submitted core documents to the Office of the United Nations High Commissioner for Human Rights to do so, invites them to make use of the harmonized guidelines on reporting, and also invites all States parties regularly to review and update their core documents while bearing in mind the current discussion on the elaboration of an expanded core document;

13. *Urges* States parties to take duly into account, in implementing the provisions of the International Covenants on Human Rights, the recommendations and observations made during the consideration of their reports by the Human Rights Committee and by the Committee on Economic, Social and Cultural Rights, and the views adopted by the Human Rights Committee under the first Optional Protocol to the International Covenant on Civil and Political Rights;[2]

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[7] Ibid., *Sixty-first Session, Supplement No. 40* (A/61/40), vol. I and II.
[8] Ibid., *Sixty-second Session, Supplement No. 40* (A/62/40), vol. I.
[9] CCPR/C/GC/32.
[10] *Official Records of the Economic and Social Council, 2006, Supplement No. 2* (E/2006/22).
[11] Ibid., *2007, Supplement No. 2* (E/2007/22).
[12] E/C.12/GC/17.
[13] E/C.12/GC/18.
[14] HRI/GEN/2/Rev.4, chap. I.

14. *Urges* all States to publish the texts of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights in as many local languages as possible and to distribute them and make them known as widely as possible to all individuals within their territory and subject to their jurisdiction;

15. *Urges* each State party to give particular attention to the dissemination at the national level of their reports submitted to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and, further, to translate, publish and make available as widely as possible to all individuals within its territory and subject to its jurisdiction by appropriate means the full text of the recommendations and observations made by the Committees after the examination of those reports;

16. *Reiterates* that States parties should take into account, in their nomination of members to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, that the Committees shall be composed of persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience, and to equal representation of women and men, and that members serve in their personal capacity, and also reiterates that, in the elections of the Committees, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems;

17. *Invites* the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, when considering the reports of States parties, to continue to identify specific needs that might be addressed by United Nations departments, funds and programmes and the specialized agencies, including through the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights;

18. *Stresses* the need for improved coordination among relevant United Nations mechanisms and bodies in supporting States parties, upon their request, in implementing the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, and encourages continued efforts in this direction;

19. *Expresses its appreciation* for the efforts made so far by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to improve the efficiency of their working methods, encourages the Committees to pursue their efforts, welcomes in this regard the meetings held by the Committees and States parties to exchange ideas on how to render the working methods of the Committees more efficient, and encourages all States parties to continue to contribute to the dialogue with practical and concrete proposals and ideas on ways to improve the effective functioning of the Committees;

20. *Takes note with appreciation* of the reports of the Working Group on the Harmonization of Working Methods of Treaty Bodies,[15] and looks forward to further deliberations in this regard;

[15] HRI/MC/2007/2 and Add.1.

21. *Also takes note with appreciation* of the report of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its fourth session,[16] and encourages all parties to participate actively in the fifth session;

22. *Encourages* the specialized agencies that have not yet done so to submit their reports on the progress made in achieving the observance of the provisions of the International Covenant on Economic, Social and Cultural Rights, in accordance with article 18 of the Covenant, and expresses its appreciation to those that have done so;

23. *Encourages* the Secretary-General to continue to assist States parties to the International Covenants on Human Rights in the timely preparation of their reports, including by convening seminars or workshops at the national level for the training of government officials engaged in the preparation of such reports and by exploring other possibilities at the request of States, such as the programme of advisory services in the field of human rights and technical cooperation;

24. *Requests* the Secretary-General to ensure that the Office of the United Nations High Commissioner for Human Rights effectively assists the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of their respective mandates by providing, inter alia, adequate Secretariat staff resources and conference and other relevant support services;

25. *Also requests* the Secretary-General to keep the General Assembly informed of the status of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, including all reservations and declarations, through the United Nations websites.

[16] A/HRC/6/8.

Draft resolution II
Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

Recalling also that a number of international, regional and domestic courts, including the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law and have held that the prohibition of cruel, inhuman or degrading treatment or punishment is customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[1] without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention,

Noting that under the Geneva Conventions of 1949[2] torture and inhuman treatment are a grave breach and that under the statutes of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court[3] acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

Welcoming the establishment of national mechanisms for the prevention of torture pursuant to the obligations of States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] which entered into force on 22 June 2006,

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[1] United Nations, *Treaty Series*, vol. 1465, No. 24841.
[2] Ibid., vol. 75, Nos. 970-973.
[3] Ibid., vol. 2187, No. 38544.
[4] Resolution 57/199, annex.

Acknowledging the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the General Assembly in its resolution 61/177 of 20 December 2006, and recognizing that its entry into force, expected before the sixty-third session of the General Assembly, will be a significant event,

Commending the persistent efforts by civil society organizations, including non-governmental organizations and the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

Bearing in mind the special procedures review process being undertaken by the Human Rights Council, and its relevant resolutions,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations, and stresses that all acts of torture must be made offences under domestic criminal law;

3. *Also emphasizes* the importance of States ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

4. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

5. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible, brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed;

6. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[5] as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;[6]

[5] Resolution 55/89, annex.

[6] See E/CN.4/2005/102/Add.1.

7. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1] to fulfil their obligations to submit for prosecution or extradite those alleged to have committed acts of torture;

8. *Encourages* all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty;

9. *Emphasizes* that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

10. *Strongly urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

11. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment or any other form of deprivation of liberty for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

12. *Urges* States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

13. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

14. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

15. *Reminds* all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

16. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production,

trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

17. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

18. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 of the Convention and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

19. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles and persons with disabilities when submitting reports to the Committee against Torture;

20. *Calls upon* States parties also to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] which provides further measures for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

21. *Welcomes* the work of the Committee against Torture and its report submitted in accordance with article 24 of the Convention,[7] recommends that the Committee continue to include information on the follow-up by States to its recommendations, and supports the Committee in its intention to further improve the effectiveness of its working sessions;

22. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee against Torture and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

23. *Notes with appreciation* the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[8] and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

24. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and

[7] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44).
[8] See A/62/221.

communications, including progress made and problems encountered, and on other official contacts;

25. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

26. *Stresses* the need for the continued regular exchange of views among the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations, including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

27. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Voluntary Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee on Prevention of Torture as well as education programmes of the national preventive mechanisms;

28. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

29. *Also requests* the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-third session a report on the operations of the Funds;

30. *Further requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

31. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

32. *Decides* to consider at its sixty-third session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.